

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 FORT PIERCE DIVISION  
4 CASE NO. 23-CR-80101-CANNON

5 UNITED STATES OF AMERICA,

6 Plaintiff,

October 12, 2023

7 vs.

Fort Pierce, Florida

8 DONALD J. TRUMP,  
9 WALTINE NAUTA,  
10 CARLOS DE OLIVEIRA,

11 Defendants.

12  
13 GARCIA HEARING DEFENDANT DE OLIVEIRA  
14 BEFORE THE HONORABLE AILEEN M. CANNON  
15 UNITED STATES DISTRICT JUDGE

16 APPEARANCES:

17 FOR THE GOVERNMENT:

18 DAVID HARBACH  
19 JOHN M. PELLETTIERI  
20 JAY I. BRATT  
21 U.S. Department of Justice  
22 Office of Special Counsel  
23 950 Pennsylvania Avenue  
24 Washington, D.C. 20530

25 MICHAEL THAKUR  
United States Attorney's Office  
99 NE 4th Street  
Miami, FL 33132

Pauline A. Stipes, Official Federal Reporter

FOR DEFENDANT  
DE OLIVEIRA:

JOHN S. IRVING, ESQ.  
E & W Law  
1455 Pennsylvania Avenue  
Suite 400  
Washington, D.C. 20004  
301-807-5670

LARRY D. MURRELL, JR., ESQ.  
400 Executive Center Drive  
Suite 201  
West Palm Beach, FL 33401

Official Court Reporter: Pauline A. Stipes  
West Palm Beach/Ft. Pierce  
561-803-3434  
HON. ROBIN L. ROSENBERG

Pauline A. Stipes, Official Federal Reporter

1           *THE COURT:* Thank you, you may be seated.

2           All right. This is criminal case number 23-80101,  
3 United States of America, represented by the Office of the  
4 Special Counsel, versus Donald J. Trump, Waltine Nauta,  
5 and Carlos De Oliveira. Let's have appearances of counsel,  
6 starting with the Government.

7           *MR. BRATT:* Good afternoon, your Honor, Jay Bratt,  
8 David Harbach, John Pellettieri and Michael Thakur from the  
9 Special Counsel's Office on behalf of the United States.

10          *THE COURT:* Thank you. Let's start with any attorneys  
11 on behalf of Carlos De Oliveira.

12          *MR. IRVING:* Good afternoon, your Honor, John Irving  
13 on behalf of Mr. De Oliveira.

14          *MR. MURRELL, JR.:* Good afternoon, Judge, Donnie  
15 Murrell on behalf of Mr. De Oliveira.

16          *MR. BLANCH:* Good afternoon, your Honor, Todd Blanch  
17 on behalf of President Trump.

18          *MS. DADAN:* Good afternoon, Sasha Dadan and Stanley  
19 Woodward on behalf of Waltine Nauta, who is present.

20          *THE COURT:* Thank you. A few preliminary points  
21 before we get started. There shall be no recording of this  
22 hearing in any way, and no use of electronic equipment. As  
23 usual, we have an overflow room on the second floor for any  
24 folks who weren't able to get a seat in the courtroom.

25          Now, this is a public hearing and I intend to keep it

1 that way, but if in the course of the hearing a need arises to  
2 consider closing the courtroom temporarily to protect  
3 attorney/client communications, then I will give an attorney,  
4 Ms. Fugatin (phon), on behalf of the press coalition an  
5 opportunity to be heard on that discrete subject, as well as  
6 the parties if they wish to comment.

7 Should such a closure become necessary, I will direct  
8 the public to exit the courtroom and also direct the Clerk's  
9 Office to turn off temporarily the Zoom link to the overflow  
10 room. Again, this is only if a temporary closure becomes  
11 necessary.

12 As you all know, we are here to conduct two Garcia  
13 hearings, the first with Mr. Carlos De Oliveira and then with  
14 Mr. Nauta. The term "Garcia" comes from that former Fifth  
15 Circuit decision in 1975, United States Garcia. That decision  
16 teaches us that the purpose of today's hearing is to conduct a  
17 fulsome colloquy with both Mr. De Oliveira and Mr. Nauta to  
18 address potential dangers of representation by counsel with  
19 possible conflicts of interest; to advise the Defendants of  
20 their right to effective representation; to ensure that each  
21 understands the details of the possible conflicts of interest  
22 and the potential perils of such conflicts; and to determine  
23 whether each has discussed the matter with their attorneys, or  
24 if they wish, with independent counsel; and then ultimately to  
25 determine whether, should either Mr. Nauta or De Oliveira wish

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1 to waive their right to conflict-free counsel, whether any such  
2 waiver is made knowingly, voluntarily and intelligently.

3 With that background, let's begin. We will get  
4 started with Mr. De Oliveira first.

5 I permit you, sir, to remain seated so you are  
6 comfortable. Just make sure the microphone is brought close to  
7 you so we can all hear you well.

8 *THE DEFENDANT:* Yes, your Honor, thank you.

9 *THE COURT:* Most of this hearing, Mr. De Oliveira, is  
10 going to be a dialogue between me and you, so I want you to  
11 feel comfortable and completely natural in asking me any  
12 questions. I will, of course, give each side an opportunity to  
13 be heard as well, and if I have questions, I will ask them  
14 accordingly as we go along.

15 With that, I will now swear you in, Mr. De Oliveira.

16 (Thereupon, the Defendant was duly sworn.)

17 *THE COURT:* To make it a little easier, you are  
18 welcome to move the base of that microphone. There you go.  
19 All right.

20 *BY THE COURT:*

21 *Q.* Please tell me your full name and your birth year?

22 *A.* Full name is Carlos De Oliveira, 10/15/66.

23 *Q.* How far did you go in school, sir?

24 *A.* I don't think I ever graduated. I left Portugal when I was  
25 17 years old, and I don't think I finished, and I start school

1 when I was 12.

2 Q. Did you pursue any additional education following your high  
3 school years?

4 A. No, ma'am. When I arrive, I arrive in Massachusetts, and I  
5 did a few night school, but that was it. I never finish  
6 anything.

7 Q. Do you read and write the English language?

8 A. I read better than I write.

9 Q. Can you write in English?

10 A. I can write, but not good.

11 Q. Have you fully understood everything I have said so far?

12 A. Yes, ma'am.

13 Q. As I said, if at any point during this hearing, sir, you  
14 don't understand what I am saying, or you need further  
15 clarification, or you wish to speak with your attorney, please  
16 do not hesitate to let me know. Understood?

17 A. Yes, ma'am.

18 Q. All right. Now, I am going to ask you a series of  
19 questions, sir, and these are designed to make sure that you  
20 fully understand what is transpiring here today.

21 Are you currently under the influence of any medication,  
22 drugs or alcohol?

23 A. No, ma'am.

24 Q. Do you feel completely alert, awake, and clear headed  
25 today?

1 A. Yes.

2 Q. Do you believe you have any physical or mental condition  
3 that would impair or affect your ability to fully understand  
4 what is transpiring here today?

5 A. No, ma'am.

6 THE COURT: Mr. Irving, are you aware of any situation  
7 concerning your client that could affect his ability to  
8 understand what is going on during today's hearing?

9 MR. IRVING: No, your Honor.

10 THE COURT: Is it your opinion, Mr. Irving, that Mr.  
11 De Oliveira is competent to proceed with this hearing today?

12 MR. IRVING: Yes.

13 THE COURT: There is another preliminary matter I want  
14 to address before we go further, and that is the manner in  
15 which we will be referencing potential witnesses.

16 As I indicated in my order setting this hearing, I  
17 want to remind the parties of what I indicated in that order,  
18 which is that references during the hearing to identify  
19 potential witnesses are to be made in accordance with the  
20 witness designations as stated in the motions. I'm referring  
21 to Docket Entries 97 and 123.

22 For purposes of this hearing, Mr. De Oliveira, the  
23 individuals that have been referenced in these papers have been  
24 referred to as follows: Trump Employee 3, Witness 1, and  
25 Witness 2.

1           So we are going to be using those designations  
2 throughout this hearing, sir. I don't know, perhaps you know  
3 who these actual individuals are, but if you intend to refer to  
4 them, I ask that you not use their real names and you use those  
5 designations.

6           Do you understand, sir?

7           *THE DEFENDANT:* Yes, I understand. I don't know who  
8 those people are by numbers.

9           *MR. IRVING:* May I have one second?

10          *THE COURT:* Yes.

11          *MR. IRVING:* Thank you, your Honor.

12          *THE COURT:* If at any point you need to speak with  
13 your attorney because you want to make sure that you are not  
14 referencing anybody's name, please feel free to do so. Okay?

15          *THE DEFENDANT:* Thank you.

16          *THE COURT:* And the same directive applies to all  
17 counsel, so please be mindful of that as we go along.

18          *BY THE COURT:*

19          *Q.* Now, at points during this hearing, Mr. De Oliveira, I am  
20 going to ask you in your own words to describe for me your  
21 understanding of what we are talking about, so I need you to  
22 pay very careful attention to my questions and to what  
23 everybody says so you can follow along and speak to me candidly  
24 and naturally about your understanding of what our conversation  
25 consists of. Understood?



1 A. Yes, ma'am.

2 Q. All right. Now, there might be some duplication and  
3 repetition in my questions, so I ask for your patience. It is  
4 very important that I conduct a fulsome comprehensive colloquy  
5 so I make sure you understand the full scope of this hearing.  
6 Understood?

7 A. Yes, your Honor.

8 Q. Now, as I mentioned, we are doing a Garcia hearing. That  
9 case helps explain a very critical tenet of our Criminal  
10 Justice System, which is that as a criminal defendant you have  
11 a constitutional right to the effective assistance of counsel,  
12 and that right encompasses both the right to be represented by  
13 an attorney that is free from conflicts of interest, and also a  
14 presumptive right to choose the attorney that you wish.

15 Do you understand, sir?

16 A. Yes, your Honor.

17 Q. Now, the Special Counsel's Office has brought to my  
18 attention what they perceive to be potential conflicts of  
19 interest that your current counsel, Mr. Irving, might face in  
20 this case due to his former representation of three witnesses  
21 the Government says it may call at trial. And again, I am  
22 referring to the folks I mentioned earlier, Trump Employee 3,  
23 and Witnesses 1 and 2.

24 So, we are here today to understand those alleged conflicts  
25 of interest, and to determine whether it is your decision to

1 continue with Mr. Irving despite those potential conflicts.

2 Are you with me thus far?

3 A. Yes, I understand.

4 Q. Okay. Now, it is also important that you understand, sir,  
5 that I am not required to accept any waiver that you might make  
6 if that is what you choose to do. In other words, if I  
7 determine that there is in fact a potential or an actual  
8 conflict of interest that is so serious it would likely  
9 undermine the fairness, efficiency, or public confidence in  
10 these proceedings, I may elect to disqualify your chosen  
11 counsel.

12 Of course, that is a disfavored remedy. As far as I can  
13 tell, the Government is not moving for such disqualification.

14 Do you understand so far?

15 A. Yes, your Honor.

16 Q. Now, as I mentioned, you are not required to continue with  
17 Mr. Irving as your lawyer. You have the right to proceed to  
18 trial with a different lawyer if you want a different lawyer.  
19 Importantly, sir, you are not required to make this decision  
20 today.

21 If at the conclusion of today's hearing you decide, you  
22 know what, I need some more time to think about this, you are  
23 welcome to have more time. You just need to tell me that is  
24 what you want. I will then make that available to you, sir.  
25 And, of course, you would also have time if you wanted to hire

1 another attorney to help you make this decision.

2 Do you understand, sir?

3 A. Yes, your Honor.

4 Q. Again, you are not required to make any decisions today.

5 Understood?

6 A. Yes, your Honor.

7 Q. But regardless, whatever your decision is, it is my duty to  
8 ensure that you understand the potential ramifications of your  
9 decision, and if you do choose to waive your right to  
10 conflict-free counsel, that your choice is a knowing, voluntary  
11 and intelligent one.

12 Are you with me thus far?

13 A. Yes, your Honor.

14 Q. Do you have any questions at all thus far?

15 A. No, your Honor.

16 Q. In terms of the format for today's hearing, I am going to  
17 start off with explaining my understanding of the alleged  
18 conflicts as drawn from the parties' filings. Then I will turn  
19 to the Special Counsel's Office for the office to supplement or  
20 add anything they wish, and then I will give your attorneys a  
21 chance to weigh in as well. And then, of course, I will come  
22 back to you with some more dialogue on these issues.

23 All right. Do you have any questions, sir, at all about  
24 the format or organization of this hearing?

25 A. No, I have no questions.

1 Q. All right. Okay. Based upon the information provided in  
2 the parties' filings the Court understands the situation as  
3 follows -- I am drawing this from filings 123, 137 and 145.

4 The Special Counsel has identified three individuals, Trump  
5 Employee 3, Witness 1 and Witness 2, who were previously  
6 represented by Mr. Irving. According to the Special Counsel,  
7 these individuals may be called as witnesses at trial and could  
8 provide testimony that inculcates you, Mr. De Oliveira.

9 Notably, these individuals have not been criminally  
10 indicted in this case, and the Special Counsel has not  
11 confirmed whether they will in fact be called as witnesses.  
12 They might be called is how the situation is framed at the  
13 moment. And so, at this point, these are potential Government  
14 witnesses.

15 Do you understand, sir?

16 A. Yes, your Honor.

17 Q. Now, I also understand that these three individuals are no  
18 longer clients of Mr. Irving, but they were his clients when  
19 the Government questioned them in connection with the  
20 underlying criminal investigation.

21 Do you understand that, sir?

22 A. Yes, your Honor.

23 THE COURT: Mr. Irving, can you confirm what I have  
24 just indicated, in other words, that you do not at this point  
25 represent any of these three individuals?

1           MR. IRVING: That is correct, your Honor.

2           THE COURT: All right. Now, I am going to go in a  
3 little bit more detail about the nature of these individuals as  
4 described in the papers, and I want to be clear before I  
5 continue that a lot of what I am about to say is rooted in  
6 allegations only, and that it will be the Government's burden  
7 to prove much of what I am about to describe beyond a  
8 reasonable doubt.

9           All right. Starting with Trump Employee 3, as he or  
10 she is described, Trump Employee 3 worked as a personal aide to  
11 former President Trump.

12           The Government alleges that Trump Employee 3 has  
13 information about an alleged telephone conversation on  
14 June 24th of 2022, between former President Trump and his  
15 lawyer regarding a Grand Jury subpoena for Mar-A-Lago security  
16 camera footage.

17           Allegedly on the afternoon of this phone call between  
18 former President Trump and his attorney Trump Employee 3  
19 allegedly texted Mr. Nauta indicating that former President  
20 Trump wanted had to see Nauta. In response to Trump Employee  
21 3's text message, Mr. Nauta, who was allegedly scheduled to  
22 travel to Illinois with former President Trump the next day,  
23 allegedly altered his plans and instead traveled to Mar-A-Lago.

24           In the day that followed, Mr. Nauta and Mr. De  
25 Oliveira -- of course I am referring to you, sir -- allegedly

1 made efforts to have Trump Employee 4, a separate individual,  
2 delete Mar-A-Lago security footage.

3 That is the summary briefly regarding Trump Employee  
4 3.

5 Witness 1, as far as the Court can discern, served as  
6 head of maintenance at Mar-a-Lago before you took over the  
7 position, sir, in January of 2022. Special Counsel alleges  
8 that Witness 1 has information showing the alleged falsity of  
9 certain statements made by you to the Government; more  
10 specifically, alleged statements made during an April 2023  
11 interview with the Government during which you allegedly were  
12 confronted with video footage showing you photographing  
13 surveillance cameras in a tunnel near a storage room where the  
14 FBI recovered certain records.

15 During this interview, it is alleged, sir, that you  
16 explained the video footage and indicated that you were looking  
17 for a shut off valve to a water pipe that had ruptured and  
18 documenting a broken door below one of the surveillance  
19 cameras.

20 The Government alleges that Witness 1 has information  
21 that is allegedly inconsistent with your explanations.

22 Additionally, the Special Counsel alleges that Witness  
23 1 has information about your alleged loyalty to the former  
24 president.

25 And finally, the Special Counsel alleges that Witness

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1 1 has information about your replacement of a lock at the  
2 supposed direction of the former president to a closet inside  
3 the former president's residence in early June of 2022, the day  
4 that Mr. Nauta and you allegedly moved boxes containing  
5 classified material. So that sums up the allegations with  
6 respect to Witness 1.

7 And finally, Witness 2 allegedly worked as a  
8 receptionist and assistant for the former president during and  
9 after his presidency. This individual allegedly has  
10 information about the alleged movement of boxes from the White  
11 House to Mar-a-Lago, and this Witness 2 also allegedly  
12 identified you as moving boxes on June 2nd of 2022.

13 *BY THE COURT:*

14 *Q.* Are you following so far, Mr. De Oliveira?

15 *A.* Yes, your Honor.

16 *Q.* All right. Now, as I have mentioned, these three  
17 individuals, they were formerly represented by your attorney  
18 during the Government's investigation in this case. You might  
19 already know this, sir, but there is something called the  
20 attorney/client privilege.

21 An attorney has certain obligations to former clients even  
22 after the representation has ended, and that privilege prevents  
23 an attorney from disclosing certain communications made between  
24 that client and the attorney even after the attorney no longer  
25 represents the client.

1 That means that the attorney cannot later use certain  
2 statements acquired by the attorney during the course of that  
3 representation.

4 Do you understand, sir?

5 A. Yes, your Honor.

6 Q. So, if any of these three individuals ultimately are called  
7 as witnesses at trial, Mr. Irving will be given an opportunity  
8 to do what is called cross-examination of those witnesses.

9 Again, you might be familiar with that term, but basically  
10 it means that Mr. Irving would have an opportunity to ask  
11 questions of that witness, and during that cross-examination  
12 process, one of the purposes is occasionally to try to poke  
13 holes in that witness' testimony or to undermine that witness'  
14 credibility, in other words, whether they are telling the truth  
15 or not.

16 Are you with me thus far, sir?

17 A. Yes, your Honor.

18 Q. And so, based on all of this, the Government suggests that  
19 there could be a dynamic in which Mr. Irving is experiencing  
20 divided loyalties between his former clients, those three  
21 people that he doesn't represent anymore, and his current  
22 client, meaning you.

23 I will describe this in a bit more detail. In other words,  
24 what I am trying to convey to you, sir, is that on the one hand  
25 your client, Mr. Irving, has a duty to zealously advocate on



1 your behalf, and part of that duty includes vigorously  
2 cross-examining those Government witnesses.

3 Do you understand thus far?

4 A. Yes, your Honor.

5 Q. But, Mr. Irving also has a duty as an attorney to maintain  
6 the privacy or confidentiality of any communications that he  
7 might have acquired in the course of his representation of  
8 those former clients.

9 Understood?

10 A. Yes, your Honor.

11 Q. So, if in the course of that representation Mr. Irving  
12 acquired any confidential information that is still privileged,  
13 he would not be allowed to use that information that he knows  
14 from his prior representation during cross-examination of those  
15 witnesses at your trial, even if using that information would  
16 be in your best interest.

17 Do you understand what I have been describing so far as  
18 these divided loyalties as they are described?

19 A. Yes, your Honor, I understand.

20 Q. And so, to put a finer point on it, you might have a  
21 situation, this is a suggestion, that if we're at trial and  
22 this witness is called, Mr. Irving might take it easy on this  
23 witness. In other words, when he is cross-examining him or her  
24 he might not ask tough questions or lay back and basically do a  
25 less vigorous cross-examination than he otherwise would have

1 done.

2 Do you understand me so far?

3 A. Yes, your Honor.

4 Q. Having said all of what I described, do you see how this  
5 situation hypothetically could be problematic to your defense,  
6 sir?

7 A. Yes, your Honor, I understand.

8 Q. Now, it is important -- again, I don't know if these  
9 individuals are going to be called. The Government says they  
10 might be called. I also don't know whether there is any  
11 information that Mr. Irving, your attorney, has that hasn't  
12 already been shared with the Government. But again, I have to  
13 advise you of these potential risks, hypothetically, if they  
14 were to materialize.

15 Do you understand, sir?

16 A. Yes, your Honor.

17 Q. Do you have any questions thus far?

18 A. No, your Honor, I don't.

19 Q. Now, I also want to mention, and this is in the papers,  
20 that your attorney has welcomed this hearing, has told me that  
21 he welcomes this opportunity for me to ask you questions to  
22 make sure that you do indeed want to proceed about Mr. Irving.

23 He has also stated in these papers that he is unaware of  
24 any information that he learned during his prior representation  
25 of those three witnesses that would prevent him from vigorously

1 cross-examining these individuals if they were called.

2 Do you understand what I have said thus far?

3 A. Yes, your Honor, I understand.

4 Q. Again, my duty and my responsibility is to make sure that  
5 you are fully aware of these potential conflicts, and how these  
6 potential conflicts might materialize and have consequences on  
7 your defense. All right.

8 Now, there is another consequence that could arise beyond  
9 what I have described, which is that cross-examination issue  
10 and concerns any possible appeals, so I want to talk about that  
11 as another potential consequence.

12 Imagine this scenario: Let's say today you decide to waive  
13 your right to conflict-free counsel, and you say I want to  
14 continue with Mr. Irving, and you make that decision.

15 Let's say it turns out that Mr. Irving does, in fact,  
16 possess some kind of information that he obtained during his  
17 prior representation, and based on that information, he was  
18 unable to conduct a thorough and vigorous cross-examination of  
19 those witnesses. Let's say all of that happens and you are  
20 found guilty.

21 You would not be able to then on appeal say, wait a  
22 minute, I had an attorney who had conflicts and I want to  
23 appeal on the basis of those conflicts because my Sixth  
24 Amendment right to conflict-free counsel was denied.

25 In other words, you wouldn't be able to come back and say,

1 you know what, I should win on appeal because I had an attorney  
2 that had a conflict even though I waived it.

3 Do you understand what I am saying, sir?

4 A. I understand.

5 Q. In short, you would be waiving those arguments on appeal,  
6 you would be foreclosed from raising those arguments on appeal.

7 Do you understand?

8 A. Yes, your Honor.

9 Q. Is there anything at all that I can clarify for you thus  
10 far? And we are still early on in our discussion, and I will  
11 have an opportunity later to ask you in your own words what you  
12 understand these issues to concern.

13 But at this point, is there anything that I can clarify for  
14 you?

15 A. Not at this point, your Honor, I am good.

16 Q. Okay.

17 *THE COURT:* Now I would like to hear from the Special  
18 Counsel's Office. I obviously have attempted to describe the  
19 conflicts as they have been presented, but if I missed  
20 something, overlooked something, or misstated something I want  
21 the Special Counsel's Office to have an opportunity to explain  
22 in more detail the nature and scope of these alleged conflicts.

23 Again, please don't refer to the actual identities of  
24 these individuals.

25 As you are going through, Mr. Harbach, if you can

1 endeavor to explain in as much detail as you can these  
2 potential conflicts as you presented them and how they could  
3 manifest at trial.

4 MR. HARBACH: Yes, your Honor. I will start with,  
5 excuse me, just one minor factual correction to the Court's  
6 recitation, and it concerns Trump Employee 3.

7 It is possible that I misheard the Court, but just to  
8 be careful, the Government does not expect Trump Employee 3's  
9 testimony to include anything about the conversation that  
10 former President Trump had with his lawyer on that day. That  
11 was merely provided in the pleading as a contextual marker for  
12 the timing of the events that came later. So, I want that to  
13 be clear on the record.

14 That is the only factual correction we have to what  
15 your Honor laid out.

16 THE COURT: All right. Thank you.

17 MR. HARBACH: On the subject of the conflicts and how  
18 they may manifest vis-a-vis Mr. Irving, we think that it would  
19 also be worth the Court's advising Mr. De Oliveira that the  
20 potential for a conflict here -- let me say that a different  
21 way -- a potential result of a conflict here would not only  
22 mean -- would not only be that Mr. Irving is presented with an  
23 issue of divided loyalties that your Honor was talking about  
24 when cross-examining any one of these three Government  
25 witnesses, in the Government's view, another result of the

1 conflicts could be that Mr. Irving is faced with the same  
2 predicament when it comes time to make argument to the jury,  
3 for example.

4 Specifically it is our view that a lawyer who suffers  
5 under a conflict, that -- in that situation the lawyer is  
6 precluded from -- by his duty of loyalty to his former  
7 client, from arguing to the jury that his former client lacks  
8 credibility or attacking his former client's character.

9 And those obligations flow from the lawyer's duty of  
10 loyalty to his or her former client, and do not turn on whether  
11 specific confidential information was provided to the lawyer  
12 that might or might not facilitate better or worse  
13 cross-examination of the witness.

14 *THE COURT:* All right. So, did you make this argument  
15 about sort of weaker arguments to juries in your papers?

16 *MR. HARBACH:* Not in our papers suggesting that we  
17 needed to have a hearing because that wasn't necessary for the  
18 Court's obligation to conduct this hearing.

19 *THE COURT:* It is important to understand how these  
20 alleged conflicts could materialize and become concrete, and so  
21 it does bear on the Court's understanding of these potential  
22 conflicts, but it sounds like what you are telling me now isn't  
23 a new concern about -- maybe more amorphous, more generalized,  
24 that just in large this attorney would be inhibited from  
25 presenting arguments to the jury. It is unclear exactly how

1 that is so.

2 MR. HARBACH: Well, I am happy to try to elaborate on  
3 that a little bit. I want to be clear not to overstate what we  
4 see is the issue here.

5 It is not -- obviously not that the lawyer would be  
6 foreclosed from making any argument to the jury. The specific  
7 concern is that the lawyer would be in a position of having to  
8 attack the credibility in argument of his or her former client  
9 and face the same divided loyalty predicament that he or she  
10 might face in cross-examining a former client.

11 THE COURT: But having nothing to do with actual  
12 possession of confidential information?

13 MR. HARBACH: Well, that could manifest in a couple of  
14 ways.

15 The point I am trying to make is that calling into  
16 question the credibility or the truthfulness of one's former  
17 client is an independent -- an independent disability on a  
18 conflicted lawyer from the difficulties presented in  
19 cross-examining a former client.

20 In other words, hypothetically speaking, this is a bit  
21 of a silly hypothetical because it would be unlikely to happen  
22 in the real world, but if a conflicted lawyer, let's say  
23 forewent cross-examining a former client altogether, just  
24 didn't cross-examine him or her, and then at time of jury  
25 argument it was incumbent upon that lawyer in zealously

1 representing his former client to argue to the jury that his  
2 former client was not credible, or was a liar, or had terrible  
3 character, those are things that, in the Government's view,  
4 implicate the duty of loyalty to the former client, and there  
5 are some cases that make the same point.

6 In other words, when a lawyer is conflicted in a  
7 way -- the way we are talking about here, the prohibition  
8 extends not only to cross-examining the former client, but also  
9 in making the types of arguments that I am talking about.

10 I want to be clear in the reason I am raising it with  
11 the Court now is just with an eye toward whatever might happen  
12 here or eventual down-the-road proceedings, a couple of which  
13 your Honor has mentioned, we just think that the prudent course  
14 would be to advise Mr. De Oliveira that there is a possibility  
15 that situation might manifest --

16 *THE COURT:* But by this situation, you just mean -- I  
17 am not still understanding fully what you mean.

18 *MR. HARBACH:* What I mean is that a lawyer's prior  
19 representation of a witness who later testifies in a criminal  
20 case against a current client --

21 *THE COURT:* Independent of any information acquired,  
22 would have a standalone disability in calling into question  
23 that individual's credibility. Is that essentially what you  
24 are saying?

25 *MR. HARBACH:* It may be a bit of a false hypothetical



1 because there are cases, including I think one case from the  
2 Eleventh Circuit, that concludes that in a situation where  
3 there is a conflict and that the conflict is substantially  
4 related, that there arises an irrebuttable presumption that  
5 relevant confidential information has been disclosed to the  
6 lawyer.

7 *THE COURT:* All right.

8 *MR. HARBACH:* So, the Government recognizes that, like  
9 many areas of the law, the area of conflicts law, it is  
10 sometimes the case that Courts are loose with terminology, like  
11 actual and potential and substantial, and so forth, so I don't  
12 mean to suggest that it is a completely logical interlocking  
13 puzzle, but the notion that if a lawyer represents, as in this  
14 case, represents a client against whom the Government is  
15 calling a witness at a criminal trial, that under cases like  
16 Ross, that is a conflict situation, period.

17 And that is not only what precipitates the Court's  
18 inquiry, but that is an actual conflict. And the next question  
19 for the Court, then, is -- in assessing whether the conflict  
20 merits disqualification, the next step would be whether the  
21 subject matters are substantially related.

22 *THE COURT:* All right. Thank you. I think I  
23 understand.

24 Are there any other ways in which you believe these  
25 conflicts could materialize beyond the cross-examination, this

1 sort of standalone disability to argue against the credibility  
2 of former clients, and then the appellate issue I mentioned?

3 MR. HARBACH: I don't think so, but I am checking with  
4 one of my colleagues. Am I forgetting something?

5 I don't think so, your Honor.

6 THE COURT: All right. Are there any additional  
7 details you wish to provide to fill in any gaps that might  
8 exist in the Court's summary of those three individuals and  
9 their respective roles in the allegations?

10 MR. HARBACH: I can -- this isn't by way of a  
11 correction as much as a supplement.

12 One additional fact that wasn't specifically mentioned  
13 in document 123 concerns Witness 1. What it says in document  
14 123 is that Witness 1 also has information about, among other  
15 things, De Oliveira's involvement of the replacement of a lock.

16 I can add a little bit more color to that to say that  
17 we expect Witness 1 to specifically say that Mr. De Oliveira  
18 was, at a minimum, present at the time the lock was changed and  
19 that involvement includes physical presence when the act took  
20 place.

21 THE COURT: All right. Thank you.

22 Now let me ask a few more questions.

23 In the papers these conflicts have been described as  
24 potential conflicts that haven't actually materialized, that  
25 they would ripen into an actual conflict in the event these

1 individuals testified.

2 I want you to clarify that that is your understanding.

3 MR. HARBACH: Again, I want to be careful about not  
4 getting -- I'm speaking for myself now -- not getting too  
5 wrapped around the axle about the nomenclature that is used to  
6 describe the conflict because, whether it is potential or  
7 actual, the Court has to do what it has undertaken today.

8 Your Honor has accurately stated from the standpoint  
9 of whether we expect Trump Employee 3, Witness 1 or Witness 2  
10 to be witnesses at trial, their status remains the same, which  
11 is to say that we may well call them as witnesses at trial.

12 There is no change on that score.

13 THE COURT: But --

14 MR. HARBACH: Have I answered --

15 THE COURT: Yes. But if they don't testify, these  
16 concerns about cross-examination and a sort of weaker jury  
17 presentation would not be present? That is at least how the  
18 papers read.

19 MR. HARBACH: Correct, and less there be any  
20 misconception, even in our interpretation of how this would  
21 play out, the witness would have to be an actual witness at  
22 trial, yes.

23 THE COURT: Okay.

24 MR. HARBACH: In a world where the Government called  
25 none of those three people, we agree that the conflicts would

1 not manifest themselves in a way that would be problematic.

2 *THE COURT:* Okay.

3 *MR. HARBACH:* Can I have one moment? Maybe I can  
4 clarify one more thing, please.

5 *THE COURT:* Yes.

6 *MR. HARBACH:* Thank you for your patience, your Honor.  
7 I was advised about one other thing by a colleague that I  
8 should mention to the Court. I know the Court is aware of  
9 this.

10 Mr. Irving and his colleague, Mr. Murrell, have made  
11 certain representations to the Court about additional measures  
12 that they have already volunteered to put in place in order to  
13 alleviate some of these problems, including a proposal that, to  
14 the extent the Government calls any of these witnesses, Mr.  
15 Murrell would cross-examine them, and furthermore, that Mr.  
16 Irving has not shared any information from these clients with  
17 Mr. Murrell. The Government doesn't have any reason to  
18 question that.

19 So, we suggest that those potential arrangements also  
20 be included in the Court's colloquy with Mr. De Oliveira.

21 *THE COURT:* Yes, that makes sense. A few more  
22 questions for you. Am I correct that the Government is not  
23 seeking disqualification at this time of Mr. Irving?

24 *MR. HARBACH:* Yes.

25 *THE COURT:* Am I also correct that you have not

1 alleged any sort of impropriety or misbehavior on the part of  
2 Mr. Irving?

3 MR. HARBACH: Also correct.

4 THE COURT: Now, with respect to these individuals,  
5 and what you anticipate them saying, has the substance of that  
6 testimony been provided to the Defense in the form of reports,  
7 et cetera?

8 MR. HARBACH: Yes, your Honor.

9 THE COURT: That encompasses all three of the  
10 individuals we are talking about now?

11 MR. HARBACH: Yes, your Honor.

12 THE COURT: So, in more detail, hypothetically, let's  
13 take Trump Employee 3, how would you see this potential  
14 conflict coming to pass in the course of a hypothetical  
15 cross-examination?

16 I am really trying to understand how this would become  
17 an issue or present itself in more detailed terms.

18 MR. HARBACH: By which your Honor means how the  
19 witness' testimony might incline a lawyer to want to  
20 cross-examine him or how --

21 THE COURT: Less vigorously than you otherwise would  
22 if you had some information that hasn't already been given to  
23 the Government and shared with Defense counsel.

24 MR. HARBACH: I understand your Honor's question and  
25 the -- I can speak in a little bit more detail -- a little bit

1 more detail about what we expect Trump Employee 3 to say from  
2 the stand, but I don't know that it would really get at your  
3 Honor's question.

4 If I understand correctly, the Court and we are in  
5 receipt of a representation by Mr. Irving that, in his view, he  
6 has not -- there has been no confidential information that has  
7 been provided to him that has not been provided to the  
8 Government, and I assume that he couches that in part as an  
9 argument that it is exceedingly unlikely that I would be in a  
10 position of having divided loyalty because I, Mr. Irving, don't  
11 know anything that might enable me to cross-examine my former  
12 client better.

13 *THE COURT:* Are you aware of any information he would  
14 have beyond what you already know from this individual?

15 *MR. HARBACH:* No, but how could we? That would all be  
16 privileged. This is not at all meant to call into question Mr.  
17 Irving's -- the bona fides of Mr. Irving's representation to  
18 the Court, but due respect to that, I think it would be  
19 extremely difficult for a lawyer in his position to  
20 categorically say right now, without knowing how his former  
21 client is going to testify on direct, that he is in possession  
22 of no information as a result of his attorney/client  
23 relationship with this witness to be able to enhance his  
24 cross-examination.

25 In other words, if your Honor is asking us to prove a

1 negative here, we are not able to do it because we don't know  
2 what we don't know. We don't know what else Mr. Irving has  
3 been provided in his attorney/client relationship with Trump  
4 Employee 3, nor should we.

5 *THE COURT:* All right. Just to be clear, this is the  
6 full scope of individuals, these three folks, there are not any  
7 additional witnesses that have been represented in the past by  
8 Mr. Irving that you have on your witness list; is that correct?

9 *MR. HARBACH:* Correct, your Honor. This is the total  
10 universe.

11 *THE COURT:* Okay. All right. Now, I know you  
12 mentioned a moment ago that there could be measures taken to  
13 alleviate these concerns and one such option would be to have  
14 local counsel do the cross-examination of the three  
15 individuals.

16 Am I correct that the Government acknowledges that if  
17 that solution were used, it would remove the actual conflict in  
18 a way that would require disqualification?

19 *MR. HARBACH:* I think ultimately, I am really not  
20 trying to be coy, ultimately, that would be up to the Court in  
21 making -- your Honor's decision about whether to accept the  
22 waiver from Mr. De Oliveira, obviously that should weigh into  
23 the calculus, of course.

24 I would add that, just a reminder of where I started,  
25 to the extent, and it may not, but to the extent that any of

1 these three witnesses' credibility becomes an issue at trial,  
2 in our view the ethical obligation would extend to Mr. Irving  
3 not impugning the credibility of his former clients to the  
4 jury.

5 *THE COURT:* All right. Thank you.

6 *MR. HARBACH:* In an abundance of caution, we think the  
7 Court should advise Mr. De Oliveira of that also.

8 *THE COURT:* All right. Thank you. Anything further  
9 before I turn to Mr. Irving?

10 *MR. HARBACH:* No, your Honor.

11 *THE COURT:* All right. Thank you. Before I hear from  
12 you, one moment, Mr. Irving, back to Mr. De Oliveira.

13 *BY THE COURT:*

14 *Q.* Were you able to fully understand what Mr. Harbach was  
15 saying in his comments to the Court?

16 *A.* To the best of my knowledge, yes, your Honor.

17 *Q.* What he indicated is, not only is there this potential risk  
18 that your attorney would pull his punches, so to speak, or be  
19 less than vigorous in his cross-examination, that separate from  
20 that there is a risk that he might not be able, in speaking  
21 with the jury, to attack the credibility of any of those people  
22 simply by virtue of the fact that he previously represented  
23 them.

24 Do you understand that?

25 *A.* I do, your Honor, I understand.



1 Q. That is a nuance to this potential conflict that we are  
2 describing. Are you with me thus far?

3 A. Yes, your Honor.

4 THE COURT: Mr. Irving, I will hear from you now.

5 MR. IRVING: Thank you, your Honor. Good afternoon.

6 This -- we certainly, as I said in the pleadings,  
7 welcome the Court's inquiry. I am happy to have the Court, you  
8 know, explain all this to Mr. De Oliveira. We appreciate that.  
9 I am not hiding anything from the Court, from anybody else, or  
10 from the Government.

11 Especially this new aspect of it involving arguments  
12 to a jury all just seems to me, frankly, to be a solution in  
13 search of a problem.

14 As I said in the pleadings, I am not aware of any, you  
15 know, confidential information that the Government doesn't  
16 already know. I don't know what I would use to hypothetically  
17 cross-examine the potential witness that we may or may not ever  
18 hear from.

19 What they have to say isn't particularly harmful to  
20 Mr. De Oliveira in the first place, so I don't -- I don't see  
21 myself ever questioning their credibility. They have been  
22 forthcoming, as has Mr. De Oliveira, with the Government since  
23 the beginning of this mess. So, might they be mistaken about  
24 something, might there be, you know, 15 pages of Grand Jury  
25 transcript with, you know, almost incomprehensible questions

1 and answers that the Government thinks they said something, and  
2 I would seek to elicit that, or Mr. Murrell would, or make  
3 arguments to the jury, sure, but --

4 *THE COURT:* Just so I understand, I assume from the  
5 Government's representation that you received already any  
6 summaries or statements by these witnesses in discovery.

7 *MR. IRVING:* Yes, I have.

8 *THE COURT:* Have you reviewed those?

9 *MR. IRVING:* I have.

10 *THE COURT:* Okay.

11 *MR. IRVING:* So the things they have to say aren't  
12 particularly harmful anyway. For example, one of the witnesses  
13 identifies Mr. De Oliveira as one of the people in the tunnel  
14 moving the boxes. We will stipulate to that. There is no  
15 secret about that at all, and that is certainly not Mr. De  
16 Oliveira's defense, that wasn't me. He said from the beginning  
17 it was.

18 So, not particularly harmful, and in any event, to the  
19 extent that any of this is a potential problem, Mr. De Oliveira  
20 has Donnie Murrell, who is, frankly, far more capable than I am  
21 to cross-examine any witnesses. He has never spoken with them,  
22 he has gotten no privileged information from them, confidential  
23 information. I no longer represent the witnesses. They have  
24 their own totally independent counsel.

25 *THE COURT:* In terms of that, when did you stop

1 representing them?

2 MR. IRVING: Around the time I filed my opposition to  
3 this hearing -- well, not to the hearing itself, but to the  
4 Government's pleading.

5 THE COURT: Do you have a rough estimate of timing for  
6 when the representation ended?

7 MR. IRVING: I don't have that pleading in front of  
8 me. It was whenever that was filed.

9 MR. HARBACH: It was August 30th, if it's helpful,  
10 Judge.

11 MR. IRVING: Thank you.

12 THE COURT: That is August 30, 2023; is that correct?

13 MR. IRVING: Give or take, yes.

14 THE COURT: That would apply to all three?

15 MR. IRVING: Yes.

16 THE COURT: You have indicated, Mr. Irving, that you  
17 are unaware of any confidential information that would preclude  
18 you or impact or impair you from conducting a fulsome and  
19 rigorous cross-examination of these witnesses. Is that still  
20 your firm view?

21 MR. IRVING: Yes.

22 THE COURT: To the best of your knowledge, do you have  
23 any information that you acquired in the course of those  
24 representations that, if revealed or used on cross-examination,  
25 would harm the former clients, but would help Mr. De Oliveira?

1           MR. IRVING: No. I think that there are -- I started  
2 going down the rabbit hole of some of the details in their  
3 fairly lengthy testimony. They have been forthcoming with the  
4 Government all along. Are there things that either they are  
5 mistaken about or that the Government thinks they are saying  
6 something that they are not really saying? Yes, there are  
7 examples of those kinds of things, but I have absolutely no  
8 concern that any of those three witnesses would not be  
9 completely honest and forthcoming and truthful before this  
10 Court and a jury.

11           THE COURT: Do you have any reservation or hesitation  
12 at all about the vigor of your ability to cross-examine these  
13 witnesses?

14           MR. IRVING: I don't, but Mr. Murrell would be doing  
15 that anyway.

16           THE COURT: Okay. Let me just clarify, is it your  
17 position that Mr. Murrell would in fact conduct the  
18 cross-examination of these three witnesses if they are called?

19           MR. IRVING: Yes, that would be fine with me.

20           THE COURT: So, is that a commitment on your part? Is  
21 that a definitive decision that for sure Mr. Murrell will be  
22 doing the cross of these three witnesses, or is that something  
23 that is sort of tentatively on the table as an option?

24           MR. IRVING: No, I am happy to make that  
25 representation right here.

1           THE COURT: Okay. Anything further, Mr. Irving?

2           MR. IRVING: No, your Honor.

3           THE COURT: All right. Thank you.

4       BY THE COURT:

5       Q. Mr. De Oliveira, were you able to hear everything that I  
6 just discussed with Mr. Irving?

7       A. Yes, your Honor.

8       Q. Do you have any questions about our conversation?

9       A. No, your Honor.

10      Q. That last bit that we were just talking about, to have Mr.  
11 Murrell do the cross-examination of those three witnesses, have  
12 you given that possibility some thought, sir?

13      A. Yes. We discussed that with my lawyers before.

14      Q. Okay. Would you be fully comfortable with Mr. Murrell  
15 conducting the cross-examination of those witnesses?

16      A. Yes, I will.

17      Q. Do you have any reservations whatsoever about Mr. Murrell  
18 conducting the cross-examination as opposed to Mr. Irving?

19      A. I have no problem with that, your Honor.

20           THE COURT: All right.

21           MR. IRVING: Your Honor -- I apologize, I don't mean  
22 to interrupt -- may I add one followup?

23           THE COURT: You may.

24           MR. IRVING: I just want to make it clear that I don't  
25 concede that there is some ethical prohibition against me

1 addressing the jury about these witnesses. This is a new one  
2 today. I am happy to spend more time thinking about it, but  
3 that doesn't ring true to me, and I just want to make it clear  
4 that I am not conceding that.

5 *THE COURT:* Do you, at this point, sense in any way  
6 that you would be disabled or impaired or harmed, impeded in  
7 your ability to interact with the jury or argue to the jury  
8 about those witnesses and their credibility?

9 *MR. IRVING:* I don't think that I should be precluded  
10 from arguing to the jury about the credibility of any witness,  
11 but as a practical matter, as I mentioned, I can't see a world  
12 where they say something where I am attacking their credibility  
13 saying they were lying.

14 *THE COURT:* My question is: Do you think you would be  
15 fully able to make those arguments to the jury despite the fact  
16 that you represented those three people?

17 *MR. IRVING:* Yes.

18 *THE COURT:* Okay. Thank you, Mr. Irving.

19 *BY THE COURT:*

20 *Q.* I will turn back to you now, Mr. De Oliveira.

21 As I stated at the beginning of this hearing, the purpose  
22 here is to make sure that you understand the potential  
23 conflicts that we have been discussing, that you understand the  
24 potential consequences of these conflicts if you continue with  
25 Mr. Irving, and also that you fully understand that you have

1 the right to obtain separate independent counsel and go with  
2 another attorney, not Mr. Irving.

3 That is the general idea here and I want to make sure you  
4 understand those things, and that whatever decision you make,  
5 and it is certainly not mine to make, that you have a full  
6 opportunity to think about that, and that you have done so  
7 knowingly.

8 With that backdrop, I am going to ask you, sir, in your own  
9 words, as best you can in your own words, how would you  
10 describe this potential conflict that the Government has  
11 suggested?

12 A. I discussed it with my lawyers yesterday, we had a  
13 conversation about the Garcia thing. I didn't know anything  
14 about it, what did it mean, and they explained that to me.

15 Q. One moment, before you proceed, I am not trying to ask you  
16 to tell me anything that you discussed privately with your  
17 attorneys. I am asking you directly: In your own words, how  
18 would you describe this conflict that we discussed?

19 And what I am referring to is Mr. Irving being in a  
20 position of cross-examining his former clients.

21 A. Okay.

22 Q. I want to see if you understand --

23 A. I understood. I don't have a problem of crossing or not  
24 crossing them.

25 Q. Do you understand, though, how this could materialize?

1 What we are talking about is that maybe, and we don't know how  
2 this could materialize, but there could be a scenario  
3 hypothetically in which Mr. Irving doesn't cross-examine these  
4 witnesses as strongly as he otherwise could because maybe he  
5 has some information that hasn't been shared with the  
6 Government.

7 Do you understand what I am saying, sir?

8 A. Yes, your Honor.

9 Q. In your own words, what is the conflict that we are trying  
10 to make sure you understand?

11 A. Um-m-m, I don't know, ma'am. I don't understand, really.  
12 I don't have -- if Mr. Murrell represents me, I am fine. Is  
13 that what they are trying to say?

14 I don't understand.

15 Q. That is part of the discussion.

16 A. Yes, I don't have a problem with Mr. John Irving or Mr.  
17 Murrell cross-examining the witness, if it is Mr. John Irving  
18 or Mr. Murrell.

19 Q. If it is Mr. Irving, are you willing to accept, sir, that  
20 there might be this confidential information --

21 A. Yes, I am willing to accept that.

22 Q. If that is true that Mr. Irving somehow possesses this  
23 information that he acquired when he was representing those  
24 individuals, if that is true and if that information hasn't  
25 already been given to the Government, are you fully

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1 comfortable, sir, with having him cross-examine those witnesses  
2 even if that means he would be kind of a weak attorney in that  
3 sense?

4 A. Yes, your Honor.

5 Q. So, do you understand, sir, that it could be that Mr.  
6 Irving, in the course of his prior representation, acquired  
7 some knowledge, some information that is confidential that he  
8 would have, and having that information, it would make him  
9 unable to fully cross-examine that witness?

10 Do you understand what I am saying, sir?

11 A. Yes, your Honor.

12 Q. Tell me in your own words how you understand that.

13 A. Uh, you are saying to me if Mr. Irving is trying to  
14 cross-examine the other people, if something they can ask  
15 him -- I don't know how to say -- they can hurt me in my  
16 testimony or something.

17 Q. Okay. But let me understand, are you fully comfortable --

18 A. Yes, your Honor.

19 Q. -- with having Mr. Murrell conducting the  
20 cross-examination?

21 A. Yes, I am.

22 Q. Now, have you thought about, Mr. De Oliveira, your ability  
23 to get a different lawyer than Mr. Irving?

24 A. No. I have no reason for it.

25 Q. Do you want any additional time to think about whether you

1 might want a different attorney to make this decision?

2 A. No, your Honor.

3 Q. Do you understand, sir, that you could if you wanted very  
4 easily get a different attorney and the Court could appoint you  
5 one if you were financially eligible for one?

6 Do you understand that?

7 A. I understand that, your Honor.

8 Q. So, you are not required -- I want you to make sure you  
9 understand you are not required to proceed with Mr. Irving.

10 Do you understand?

11 A. I understand that, your Honor.

12 Q. Have you had an opportunity to talk with any other  
13 attorneys about this issue, or do you want to talk to any other  
14 attorneys about this issue?

15 A. I didn't talk about it, and I don't want to.

16 Q. Now, before today's hearing, did you have a full  
17 opportunity to talk about these matters with Mr. Irving,  
18 without telling me what it is that you talked about?

19 A. We discussed about --

20 Q. I don't want to know what you talked about. I am just  
21 asking: Did you have a full opportunity to talk about these  
22 issues with Mr. Irving?

23 A. I did, your Honor.

24 Q. Did you talk about these issues with Mr. Murrell?

25 A. Yes.

1 Q. Do you need any more time to talk with either of them about  
2 this issue?

3 A. No, your Honor.

4 THE COURT: Mr. Irving -- and you can return to the  
5 podium or stand at counsel table if you prefer.

6 In your view, sir, does Mr. De Oliveira have enough  
7 information to make a decision about whether to move forward  
8 with you as co-counsel in his case?

9 MR. IRVING: Absolutely.

10 THE COURT: And if you could briefly describe, not the  
11 content of your conversations, but the acts of discussing these  
12 issues with Mr. De Oliveira.

13 MR. IRVING: Sure. I will volunteer that Mr. Murrell  
14 and I met with Mr. De Oliveira, we have had this conversation  
15 more than once with the filings and the nature of the problem,  
16 the potential problem. We have discussed that, you know, on  
17 more than one occasion, but as recently as yesterday. We have  
18 spent, I don't know how long, at least an hour talking about  
19 it, the nature of the problem, the nature of the potential  
20 problem, you know, the solutions that we are proposing, our  
21 guess at least as to how this was going to proceed today.

22 THE COURT: Thank you.

23 MR. IRVING: Sure.

24 THE COURT: All right. You can return to counsel  
25 table.

1 BY THE COURT:

2 Q. Mr. De Oliveira, do you have any questions at all about  
3 what I have asked you or what I have discussed with the  
4 attorneys?

5 A. No, your Honor.

6 Q. Is there anything that has not been clear to you?

7 A. No, your Honor.

8 THE COURT: All right. Is there anything further from  
9 the Office of the Special Counsel in terms of these alleged  
10 conflicts?

11 MR. HARBACH: Yes, your Honor. I will be brief.

12 Two things, your Honor. One is a factual matter that  
13 we thought would be worth putting on the record for your Honor  
14 to consider, and that is that the Special Counsel's Office has  
15 been advised by the new lawyer who is representing all three of  
16 the relevant witnesses, the lawyer is present in the courtroom,  
17 he advised us over the last couple of days that each of his  
18 clients has waived whatever rights to assert conflicts they  
19 might have vis-a-vis Mr. Irving.

20 I wanted to make sure the Court was aware of that and  
21 put that on the record.

22 THE COURT: All right. Thank you.

23 MR. HARBACH: The second thing is, in light of your  
24 Honor's questions and a comment made by Mr. Irving, I thought  
25 it might be worth pointing out to the Court some authority for

1 the proposition that we advanced, that the duty of loyalty  
2 encompasses not only cross-examination, but also argument to  
3 the jury. I will just mention a couple of cases.

4 *THE COURT:* These would be cases that were not  
5 included here in your papers?

6 *MR. HARBACH:* Yes, your Honor.

7 *THE COURT:* Why are you raising it for the first time  
8 now?

9 *MR. HARBACH:* Well, because the purpose of those  
10 papers was only to suggest that a hearing was necessary.

11 *THE COURT:* To be fair, they were quite voluminous,  
12 they were lengthy, they were well done on both sides, so it  
13 seems a bit odd that you have omitted this new theory which, as  
14 you have explained, appears to be a valid concern on the part  
15 of the Government.

16 *MR. HARBACH:* To that extent, we apologize, but it is  
17 in our view well grounded in the duty of loyalty to a former  
18 client.

19 It presents the -- as I said earlier, I will keep it  
20 brief. It presents the same ethical dilemma that cross would.  
21 If your Honor doesn't care to hear about the authority --

22 *THE COURT:* It's not that I don't care to hear about  
23 it, I just think it should be done in a procedurally proper  
24 way. So, raising new arguments and new authorities without  
25 having done so in writing, of course, deprives the other side

1 of an opportunity to weigh in on those and that is the issue.

2 If you want to briefly tell me what the cases are just  
3 for my own edification, I welcome that. I think we will do  
4 some more discussion about this sort of stand-alone possibility  
5 that you described independent of any actual confidential  
6 communications.

7 MR. HARBACH: Yes, your Honor. There are three cases.  
8 One is from the Southern District of New York, United States  
9 versus Yannotti, Y-A-N-N-O-T-T-I, it is from 2004, at 358  
10 F.Supp. 2d. 289, and the PIN cite is 295.

11 There is an Eastern District of New York case that  
12 cites Yannotti, United States versus Spataro, S-P-A-T-A-R-O,  
13 this is an unreported opinion, and it is at 2005 WestLaw  
14 3775954. And finally, United States versus Rahman,  
15 R-A-H-M-A-N, an opinion by Judge Mukasey in the Southern  
16 District of New York, 861 F. Supp. 266, and the Pin cite there  
17 is 277.

18 THE COURT: All right. Just before you turn back to  
19 your table, is there any evidence in the form of witness  
20 testimony or declarations, or anything along those lines, that  
21 the Government wishes to introduce into the factual record for  
22 purposes of this Garcia Hearing?

23 MR. HARBACH: Assuming that your Honor is willing to  
24 accept proffers of counsel about what Witnesses 1 and 2 and  
25 Trump Employee 3 would say if called as witnesses at trial,

1 assuming proffers are sufficient for that purpose, then we have  
2 nothing else to add.

3 *THE COURT:* All right. Thank you. That will be  
4 sufficient then.

5 One more question, Mr. Harbach. Are there any  
6 additional topics you believe need to be covered with Mr. De  
7 Oliveira? I will go through some questions with him in just a  
8 moment, but I want to make sure, if there are any areas I  
9 overlooked you let me know about that.

10 *MR. HARBACH:* Understood, your Honor. Not at this  
11 point.

12 *THE COURT:* All right.

13 *BY THE COURT:*

14 *Q.* Mr. De Oliveira, I am going to turn back to you. I will  
15 ask a series of questions and they will flow from our  
16 conversation that we have been having. Again, the point here  
17 is to make sure that you understand your rights and make  
18 whatever decision you make knowingly and intelligently.

19 Understood?

20 *A.* Yes, your Honor.

21 *Q.* Do you understand that you have a constitutional right to  
22 effective assistance of counsel?

23 *A.* Yes, your Honor, I understand.

24 *Q.* Do you understand that that right includes a right to have  
25 an attorney that has no conflicts?

1 Do you understand that?

2 A. Yes, your Honor.

3 Q. Now, do you understand how these potential conflicts we  
4 have been describing, how they could materialize at trial? We  
5 talked about them either in the form of cross-examination,  
6 weaker cross-examination if Mr. Irving were to do it, and also  
7 as the Government has described, Mr. Irving would be  
8 potentially unable to present to the jury any argument about  
9 the credibility, or lack thereof, of those witnesses simply by  
10 virtue of his prior representation.

11 Do you understand how those conflicts could bear out if  
12 those individuals were called as witnesses?

13 A. I understand, your Honor.

14 Q. Do you understand that another consequence of choosing to  
15 continue to proceed with Mr. Irving would mean that you  
16 wouldn't on appeal be able to say later, you know what, I had  
17 an attorney with a conflict and therefore my conviction should  
18 be reversed?

19 Do you understand that?

20 A. Yes, I understand that, your Honor.

21 Q. Do you have any questions about how these potential  
22 conflicts could arise?

23 A. No, your Honor, I don't.

24 Q. Do you understand, sir, that you have the right to proceed  
25 with a different attorney if you want?



1 A. Yes, I understand that, your Honor.

2 Q. And that attorney would be someone who has never  
3 represented any of those three people.

4 Do you understand that, sir?

5 A. Yes, your Honor, I understand.

6 Q. And that attorney would have none of these alleged issues  
7 associated with potential cross-examination and appeal to the  
8 jury.

9 Do you understand that?

10 A. Yes, your Honor.

11 Q. And at the same time, sir, do you understand you have the  
12 right to choose the attorney that you want to represent you in  
13 this action?

14 A. Yes, your Honor, I understand.

15 Q. In other words, do you understand, sir, you are free to  
16 waive any conflicts that your attorney might have and proceed  
17 with Mr. Irving despite these alleged conflicts as we have been  
18 discussing them?

19 A. I understand, your Honor.

20 Q. Do you understand, sir, also that you don't have to make  
21 this decision right now, that you can take more time and ask  
22 me, and I would be perfectly comfortable with you telling me,  
23 you know, Judge, I need more time to think about this, this is  
24 just too serious, I don't want to make a decision now?

25 A. No, your Honor, I am okay. I discussed it with my lawyers

1 on previous days.

2 Q. Okay. Are you confident, Mr. De Oliveira, that Mr. Irving  
3 will be able to adequately represent your interests,  
4 understanding the conflicts as the Government and the Court has  
5 described them?

6 A. Yes, I am confident.

7 Q. Do you have any doubts whatsoever about that?

8 A. No, your Honor.

9 Q. All right. So, at this point, having gone over with you  
10 the alleged conflicts, the potential consequences of waiving  
11 your right to conflict-free counsel under the Sixth Amendment,  
12 and also having discussed your right to obtain an independent  
13 attorney who never represented these three individuals, what  
14 would you like to do, Mr. De Oliveira?

15 Do you want to continue to move forward with Mr. Irving?

16 A. I would like to continue forward with Mr. Irving, your  
17 Honor.

18 Q. You want to do that despite all that we have discussed  
19 today?

20 A. Yes, your Honor.

21 Q. Are you comfortable if Mr. Irving is the person who does  
22 the cross-examination?

23 A. Yes, your Honor.

24 Q. Although remember, as we talked about, you can choose to  
25 have Mr. Murrell do that as well.

1 Do you understand that?

2 A. Yes, your Honor, I understand.

3 Q. Now, I want to make sure that this is your decision and  
4 nobody else's decision.

5 The decision you are making today that you want to continue  
6 with Mr. Irving, is that your decision?

7 A. Yes, your Honor.

8 Q. Has anybody tried to force you into making this decision?

9 A. No, your Honor.

10 Q. Has anybody tried to coerce you into making this decision?

11 A. No, your Honor.

12 Q. Do you feel in any way any pressure, or influence, or  
13 coercion at all in making this decision?

14 A. No, your Honor, I don't feel it.

15 THE COURT: Mr. Irving, do you believe there are any  
16 additional questions I should ask of Mr. De Oliveira?

17 MR. IRVING: No, your Honor.

18 THE COURT: Mr. Harbach, any additional questions you  
19 think should be asked of Mr. De Oliveira?

20 MR. HARBACH: Nothing further, your Honor. Thank you.

21 THE COURT: Mr. De Oliveira, is it your wish today to  
22 waive your right to conflict-free counsel under the Sixth  
23 Amendment and proceed with Mr. Irving?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Based on this colloquy and the Court's

1 extensive questioning of Mr. De Oliveira and the discussion of  
2 both attorneys, I'm going to find, based on the record  
3 developed, that Mr. De Oliveira has in fact made a knowing,  
4 intelligent and voluntary waiver of any potential or actual  
5 conflict of interest arising from Mr. Irving's former  
6 representation of those three potential witnesses identified in  
7 the Government's motion.

8 Anything further, Mr. Irving?

9 MR. IRVING: No, your Honor, thank you.

10 THE COURT: Anything further from Mr. Harbach?

11 MR. HARBACH: No, your Honor.

12 THE COURT: We are going to take a brief break prior  
13 to conducting the second Garcia hearing with Mr. Nauta. It is  
14 2:20. We will commence at 3:00 o'clock. Thank you.

15 (Thereupon, the hearing concluded.)

16 \* \* \*

17 I certify that the foregoing is a correct transcript  
18 from the record of proceedings in the above matter.

19  
20 Date: October 13, 2023

21 /s/ Pauline A. Stipes, Official Federal Reporter  
22  
23  
24  
25

Pauline A. Stipes, Official Federal Reporter

<p>MR. BLANCH: [1] 3/15  MR. BRATT: [1] 3/6  MR. HARBACH: [38] 21/3  21/16 22/15 23/1 23/12 24/17  24/24 25/7 26/2 26/9 27/2  27/13 27/18 27/23 28/2 28/5  28/23 29/2 29/7 29/10 29/17  29/23 30/14 31/8 31/18 32/5  32/9 35/8 44/10 44/22 45/5  45/8 45/15 46/6 46/22 47/9  51/19 52/10  MR. IRVING: [30] 3/11 7/8  7/11 8/8 8/10 12/25 33/4  34/6 34/8 34/10 35/1 35/6  35/10 35/12 35/14 35/20  35/25 36/13 36/18 36/23 37/1  37/20 37/23 38/8 38/16 43/8  43/12 43/22 51/16 52/8  MR. MURRELL, JR.: [1] 3/13  MS. DADAN: [1] 3/17  THE COURT: [80]  THE DEFENDANT: [4] 5/7 8/6  8/14 51/23</p>	<p>33132 [1] 1/22  33401 [1] 2/6  3434 [1] 2/8  358 [1] 46/9  3775954 [1] 46/14  3:00 o'clock [1] 52/14</p>	<p>affect [2] 7/3 7/7  after [3] 15/9 15/22 15/24  afternoon [7] 3/7 3/12 3/14  3/16 3/18 13/17 33/5  again [10] 4/10 9/21 11/4  16/9 18/8 18/12 19/4 20/23  27/3 47/16  against [4] 24/20 25/14 26/1  37/25  ago [1] 31/12  agree [1] 27/25  aide [1] 13/10  AILEEN [1] 1/13  alcohol [1] 6/22  alert [1] 6/24  all [52] 3/2 4/12 5/7 5/19  6/18 8/16 9/2 11/14 11/23  11/23 12/1 13/2 13/9 15/16  16/18 18/4 19/7 19/19 20/9  21/16 22/14 25/7 25/22 26/6  26/21 29/9 30/15 30/16 31/5  31/11 32/5 32/8 32/11 33/8  33/12 34/15 35/14 36/4 36/12  37/3 37/20 43/24 44/2 44/8  44/15 44/22 46/18 47/3 47/12  50/9 50/18 51/13  allegations [3] 13/6 15/5  26/9  alleged [15] 9/24 11/17  13/13 14/8 14/10 14/15 14/23  15/10 20/22 22/20 29/1 44/9  49/6 49/17 50/10  allegedly [11] 13/17 13/19  13/21 13/23 13/25 14/11  14/21 15/4 15/7 15/9 15/11  alleges [5] 13/12 14/7 14/20  14/22 14/25  alleviate [2] 28/13 31/13  allowed [1] 17/13  almost [1] 33/25  alone [1] 46/4  along [5] 5/14 8/17 8/23  36/4 46/20  already [8] 15/19 18/12  28/12 29/22 30/14 33/16 34/5  40/25  also [22] 4/8 9/13 10/4  10/25 12/17 15/11 17/5 18/10  18/19 18/23 21/19 24/8 26/14  28/19 28/25 29/3 32/7 38/25  45/2 48/6 49/20 50/12  altered [1] 13/23  Although [1] 50/24  altogether [1] 23/23  am [47] 6/14 6/18 8/19 9/21  10/5 11/16 12/3 13/2 13/5  13/7 13/25 16/24 20/3 20/15  23/2 23/15 24/9 24/10 24/17  26/3 26/4 28/22 28/25 29/16  31/16 31/19 33/7 33/9 33/14  34/20 36/24 38/2 38/4 38/12  39/8 39/15 39/17 39/19 40/7  40/12 40/21 41/10 41/21  42/20 47/14 49/25 50/6  Amendment [3] 19/24 50/11  51/23  AMERICA [2] 1/4 3/3  among [1] 26/14</p>
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